

THE EUROPEAN SOCIAL CHARTER IN CONTEXT OF ECONOMIC CRISIS

1. *The Charter and its procedures*

First of all express my gratitude for this opportunity to talk about the European Social Charter and its role in protecting social rights in periods of economic crisis. The Charter is a human rights treaty which we often describe as a complement to the Convention with both treaties being rooted in the UDHR. However despite all the well-meaning talk about the indivisibility of human rights and about social rights being human rights on an equal footing with the civil and political rights there is no doubt that the impact of the Charter is inferior to that of the Convention and it is certainly much less known and less visible than the Convention.

Things have been changing for the better over the last decade, the Charter is emerging as an important element of the European human rights architecture for the protection of fundamental social rights. That said, even among legal practitioners awareness of the Charter is not always as strong as we could wish and that is why I propose to begin my intervention today with a general introduction to the instrument and its procedures before moving into some comments on how it can protect social rights in periods of economic crisis.

The Charter was adopted in 1961 and revised in 1996. It is one of the CoE's most widely ratified human rights treaties, it is currently ratified by 43 out of the 47 Council of Europe member States. 33 States are bound by the Revised Charter and 10 are still bound by the 1961 Charter.

The material scope of the Charter is very wide. RESC contains *31 Articles and 98 numbered paragraphs* covering everything that is traditionally regarded as social rights: housing, health, employment, education, social protection, non-discrimination. Within these areas there are also provisions that protect specific target groups such as children, the disabled, the elderly and migrants.

It is a rather unique feature of the Charter – some would say a weakness – that a country can choose which provisions of the Charter to accept as long as it chooses a certain minimum number (not less than 16 articles or 63 numbered paragraphs). Considering that there are 31 articles and 98 numbered paragraphs in the Charter this leaves a certain room for choice. This means that different States are bound by different obligations.

Supervision of the application of the Charter takes place on the basis of two procedures, a reporting procedure and a collective complaints procedure. In both procedures the supervisory or regulatory body is the *European Committee of Social Rights*, which is composed of 15 independent experts, elected by the Committee of Ministers for a period of six years. The ECSR holds its meetings (sessions) 7 times per year in Strasbourg, for one week at a time. The ECSR is responsible for making the legal assessment of whether States comply with the requirements of the Charter. It has in many respects

the nature of a quasi-judicial body and it began adopting “conclusions” about state compliance with the Charter more than 40 years ago (in 1968) on the basis of the national reports. In addition, since 1998 it has handed down “decisions” in collective complaints cases. These conclusions and decisions containing the legal assessments of state compliance make up what is commonly called the Committee’s “case law”.

The reporting procedure is mandatory for all States Parties and at present they report on each accepted provision every 4 years. The articles are divided into 4 thematic groups with a report on one theme every year. The thematic groups are: *Employment, training and equal opportunities, Health, social security and social protection, Labour rights and Children, families and migrants*. The report has to indicate the manner in which States apply the Charter in law and in practice. States are obliged to communicate the reports not only to the COE, but also to representative national trade unions and employers’ organisations. In this way these organisations have the opportunity to submit comments on the report of their Government. The reports are examined by the ECSR which decides whether the situation is in conformity for each provision accepted by each State. In reaching these decisions, the Committee may also take into account information from other sources than the national report. This could, for example, be information provided by NGOs.

The conclusions of the ECSR, after their adoption, are made public and transmitted to the Governmental Committee (composed of Government representatives, as well as observers from international organisations of workers and employers). The Governmental Committee has the task of examining national situations of non-conformity identified by the ECSR, encouraging states concerned to change law or practice. This is the phase of political follow-up to the conclusions of non-conformity of the ECSR.

The collective complaints procedure, which was adopted in 1995 and entered into force in 1998, allows certain trade unions, employers’ organisations and NGOs to lodge complaints alleging violations of the Charter. The procedure is facultative (as opposed to the reporting procedure) and so far only 15 out of the 43 States Parties are bound by it.

The complaints procedure constitutes an important instrument for enforcing the rights guaranteed by the Charter. The impact of this procedure is growing steadily. It is a speedy and transparent procedure and it is easily accessible (for example, no requirement for exhausting domestic remedies).

The procedure permits to put the abstract normative prescriptions of the Social Charter to the test of reality, that is to the test of specific, concrete situations. The collective complaints procedure is important because it opens the door of the Social Charter to the civil society, to NGOs and the world of workers, who are directly interested in the implementation and enjoyment of such rights.

The general supervision carried out under the collective complaints procedure has led to a good level of compliance by States, which have generally taken measures to put the situation in conformity (adoption of legislation, constitutional changes, adoption of practical measures, etc.).

2. The safeguarding of the rights in the ESC in periods of economic crisis

Following the onset of the economic crisis in 2007-2008 which was putting social rights under pressure, the Committee issued a statement in Conclusions 2009 emphasising that the rights of the Charter must be fully protected, also under conditions of budgetary austerity. And that governments are bound to take all necessary steps to ensure that the rights of the Charter remain effectively guaranteed at a period of time when beneficiaries need the protection most. This was a statement by the Committee, which has more of a moral value, than a legal one. However, since then the Committee has had occasion to assess the impact of austerity measures in both of its supervisory procedures, but notably in a series of complaints lodged by Greek trade unions against Greece.

The Committee's conclusions last year under Article 1 of the Charter, and more specifically Article 1§1 which obliges States to pursue a policy of full employment and to adequately assist the unemployed in finding work, are worth mentioning. Given the economic crisis it is perhaps not surprising that the Committee found a number of countries to be in breach of this obligation. 13 States: Albania, Armenia, BiH, Bulgaria, Croatia, FYROM, Georgia, Greece, Italy, Latvia, Moldova, Slovakia and Turkey were found not to have demonstrated that their efforts in terms of job creation, training and assistance for the unemployed were adequate in the light of the economic situation and the level of unemployment (which was extremely high in most of these countries).

As regards the collective complaints procedure, in two decisions from May 2012 the Committee held that certain changes to Greek labour law introduced in 2010 as part of the Government's policy to redress the economic situation were contrary to the Charter. This concerned for example the abolition of dismissal protection for employees during probationary periods and the introduction of a very low minimum wage for workers under the age of 25. In finding violations on these points, the Committee underlined that greater labour market flexibility in order to combat unemployment and promote hiring should not result in depriving broad categories of workers of the fundamental labour rights that protect them from arbitrary decisions by employers and from economic fluctuations.

In the follow-up to these cases, the Greek authorities accepted that the specific labour laws of 2010 were not in conformity with the Charter, pointing out that they were the result of the financial vortex threatening the survival of the country's economy. They underlined that they were provisional measures, which would be revoked as soon as the economic situation of the country would allow, but no timeframe was indicated, and that not likely before 2015.

In December 2012, the Committee ruled in five other cases concerning reforms of old-age pension schemes in Greece entailing drastic reductions of most pensions. The Committee held that the cumulative effect of the various aspects of the reforms was such as to lead to a significant degradation of the living standard of a very large number of pensioners in violation of Article 12§3, which requires States to progressively raise the social security system to a higher level. The Committee noted that, despite the particular context in Greece created by the economic crisis and the fact that the Government was required to take urgent decisions, the Government had not conducted the minimum level of research and analysis into the effects of such far-reaching measures that is necessary to assess in a meaningful manner their full impact on vulnerable groups in society.

Responding to the Greek Government's argument that the pensions reforms had been undertaken to honour an international agreement with the "Troika", the Committee recalled that this does not remove the reforms from the ambit of the Charter and pointed out that it is ultimately for the Committee to assess compliance of national situations with the Charter, including when other international obligations may interfere with those of the Charter.

3. Concluding remarks

While the Charter mechanism is arguably stronger and more visible than it ever was, there is definitely no cause for complacency. As regards guarantee mechanisms there is still a long way to go before social rights are protected at the same level as civil and political rights. Speaking of the Charter it is a matter of concern, for example, that only 15 out of 43 States Parties have accepted the complaints procedure; it is also not reassuring that the execution of the Committee's decisions in some cases is less than satisfactory. This being said, the Charter has potential in protecting social rights, as seen in the examples above, through both of its supervisory procedures also in the context of economic crisis.